1 KALPANA SRINIVASAN (237460)
   OLEG ELKHUNOVICH (269238)
2 MICHAEL ADAMSON (*Pro hac vice*)
   SUSMAN GODFREY L.L.P.
3 1900 Avenue of the Stars, Suite 1400
   Los Angeles, California 90067-6029
4 Telephone: (310) 789-3100
   Facsimile: (310) 789-3150
5 ksrinivasan@susmangodfrey.com
   oelkhunovich@susmangodfrey.com
6 madamson@susmangodfrey.com

7 IAN B. CROSBY (*Pro hac vice* forthcoming)
   SUSMAN GODFREY L.L.P.
8 1201 Third Avenue, Suite 3800
   Seattle, Washington 98101-3000
9 Telephone: (206) 516-3800
   Facsimile: (206) 516-3883
10 icrosby@susmangodfrey.com

11 Attorneys for Defendants
   Bitdefender S.R.L. and Bitdefender Inc.
12

13   **UNITED STATES DISTRICT COURT**

14   **NORTHERN DISTRICT OF CALIFORNIA**

15   **OAKLAND DIVISION**

16 | FINJAN, INC., a Delaware Corporation, | Case No: 4:17-cv-04790-HSG |

17   Plaintiff,   **DEFENDANTS' REQUEST FOR
                                            JUDICIAL NOTICE OF ORDER
18   v.   GRANTING IN PART EARLY MOTION
                                            FOR SUMMARY JUDGMENT ON '494
19 BITDEFENDER INC., a Florida Corporation, PATENT IN *FINJAN, INC. v. JUNIPER
   and BITDEFENDER S.R.L., a Romanian   NETWORKS, INC.*
20 Corporation,

21   Defendants.

22

23

24

25

26

27

28

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE
RE CLAIM CONSTRUCTION   Case No. 4:17-cv-04790-HSG

6029877v1/015723

1

BITDEFENDER'S REQUEST FOR JUDICIAL NOTICE

2   Bitdefender Inc. and Bitdefender S.R.L. (together, "Bitdefender") file this Request for

3   Judicial Notice of an Order Granting In Part Early Motion for Summary Judgment on Finjan's

4   Patent No. 8,677,494 ("the '494 patent") in *Finjan, Inc. v. Juniper Networks, Inc.*, No. C 17-

5   05659 WHA (N.D. Cal.) (the "*Juniper* Order"). The *Juniper* Order, attached hereto as Exhibit A,

6   was made publicly available on August 31, 2018. In granting in part summary judgment in

7   connection with the '494 patent, which Finjan also asserted in this case, the Court construed

8   several terms at issue before this Court. This Court held a claim construction hearing on various

9   Finjan patents, including the '494 patent, on June 6, 2018.

10   For convenience of the Court, the terms at issue, constructions adopted by the *Juniper*

11   court, and constructions proposed by Bitdefender and Finjan in this case are summarized in the

12   following table:

Patent (Claims)	Term from *Juniper* That Is Identical or Similar to Term at Issue in this Case	*Juniper* Court's Adopted Construction	Bitdefender's Proposed Construction	Finjan's Proposed Construction
'494 (10, 11)	"database manager"	"a program or programs that control a database so that the information it contains can be stored, retrieved, updated and sorted"	"a program or programs that control a database so that the information it contains can be stored, retrieved, updated, and sorted"	No construction necessary—Plain and ordinary meaning. Plain and ordinary meaning of database manager is hardware and/or software that controls a database.
'494 (10)	"scanner"	"software that searches code to identify suspicious patterns or suspicious computer operations"	This phrase should be construed pursuant to 35 U.S.C. § 112(6) to cover the corresponding structure disclosed in the '494 patent,	No construction necessary—Plain and ordinary meaning

			namely the code scanner referred to in the '194 patent at 5:36–57, 9:20–33, and Fig. 7, and equivalents Alternatively, "a code scanner that uses parsing techniques to decompose code into constituent operations and identifies specified operations or patterns of operations"	
'494 (1,6, 10, 15)	"suspicious computer operations"	Not indefinite "list of computer operations in a received Downloadable that are deemed hostile or potentially hostile"	Indefinite Alternatively, "a subset of all possible computer operations that have been deemed suspicious prior to their inclusion in the list"	No construction necessary—Plain and ordinary meaning. Plain and ordinary meaning of "suspicious" is "hostile or potentially hostile"

Judicial notice is warranted here given a contemporaneous order of the court construing the '494 patent. "[T]he Supreme Court has stressed the particular importance of intrajurisdictional uniformity in claim construction." *Finjan, Inc. v. Symantec Corp.*, No. 14-cv-01998-HSG, 2017 WL 550453, at *3 (citing *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996)). The interest in uniformity would seem to weigh most heavily where, as here, a court in this District issues a claim construction order shortly before another is likely to be issued in the same jurisdiction with few if any intervening legal developments. *See Rambus v. Hynix Semiconductor Inc.*, 569 F. Supp. 2d 946, 965 (N.D. Cal. 2008) (surveying cases including one promoting "considerable deference . . . to . . . prior decisions unless overruled or undermined by subsequent

6029877v1/015723

1   legal developments" (citing *Sears Petroleum & Transport Corp. v. Archer Daniels Midland Co.*,

2   No. 5:03-CV-1120 (DEP), 2007 WL 2156251, at *8 (N.D.N.Y. July 24, 2007)).

3   For these reasons, Bitdefender requests judicial notice of the *Juniper* Order.

4   Dated: September 5, 2018   KALPANA SRINIVASAN
                                      OLEG ELKHUNOVICH
5   MICHAEL ADAMSON
                                      SUSMAN GODFREY L.L.P.
6
                                      IAN B. CROSBY
7   SUSMAN GODFREY L.L.P.

8   By: */s/ Michael Adamson*
9   Michael Adamson

10   *Attorneys for Defendants Bitdefender S.R.L. and
                                      Bitdefender Inc.*
11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

6029877v1/015723